

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY WASTE TIRE ABATEMENT PROGRAM

TO: Prospective Applicants for Waste Tire Abatement Contracts

FROM: Gary Rikard, Executive Director, Mississippi Department of
Environmental Quality

SUBJECT: Request for Applications for Waste Tire Abatement Contractors

GENERAL INFORMATION

SECTION A: SERVICES AND PRICES

The Mississippi Department of Environmental Quality, Office of Pollution Control (MDEQ), invites qualified persons to submit an application for selection as a contractor to provide labor, materials, facilities, services, equipment and management necessary for the removal, processing, and disposal of waste tires from unauthorized waste tire sites in the State of Mississippi.

The contracts to be awarded will be indefinite quantity type contracts, with subsequent work orders issued against the contract. The contract provides for a work order to be issued for an assigned abatement project to include specifications regarding the particular site(s), including the approximate number of waste tires contained at the particular clean-up site and the amount to be reimbursed to the contractor upon completion of the tasks enumerated in the work order. Reimbursement will be at a rate of \$160.00 per ton of tires and tired derived materials removed.

Each contract shall not exceed a ceiling amount of \$75,000.00. The cumulative amount of the work orders issued under the contract shall not exceed the contract ceiling amount. In some cases the ceiling amount of contracts to be awarded may exceed the anticipated \$75,000.00 amount, including but not limited to, where the applicant can demonstrate that it has sufficient capacity to accommodate the prompt removal, processing, and/or disposal of very large deposits of waste tires (projected at amounts greater than 450 tons and/or 40,000 tires). The ceiling amount of the contracts or the cumulative amount of the work orders will not exceed \$75,000.00 without prior approval of the Personal Services Contract Review Board.

MDEQ does not guarantee a minimum amount of work to each contractor. All work orders will be issued to the approved contractors, contingent upon such factors as the proximity of the contractor to the clean-up site, the ability of the contractor to remove, process, and dispose of the quantity of tires contained therein, and the number and amounts of previous work orders assigned to the contractor.

It is anticipated that the contracts will be awarded in **early 2017**, with the first period of performance ending no later than **December 31, 2020**. MDEQ anticipates award of Multi-Term contracts for a period of time not to exceed four (4) years with an option to renew for one additional year. Payment and performance obligations for the succeeding fiscal period shall be subject to the availability and appropriation of funds. In the event that funds are not available for any succeeding fiscal period, the remainder of such contracts shall be canceled. However, the State's rights or the contractor's rights under any termination clause in the contracts are not affected. MDEQ will notify the contractor on a timely basis that funds are or are not available for the continuation of the contracts for each succeeding fiscal period.

SECTION B: WORK STATEMENT

The successful applicants will be expected to perform the following tasks, which shall be listed in the contract. All subsequent work orders issued pursuant to the contract shall be incorporated as a part of the contract as if fully set forth therein.

1. MDEQ shall issue a work order for each project authorizing the CONTRACTOR to proceed with the work related to the waste tire abatement site specified in the work order. MDEQ shall be responsible for securing "right of entry" agreements with the landowner or other access rights for the project site(s).
2. The work order shall specify the location as well as the estimated quantity and/or weight of the tires and approximate costs to be paid by MDEQ to the CONTRACTOR for each site.
3. The CONTRACTOR shall proceed with the work specified in the work order within ten (10) working days of the issuance of the work order by MDEQ, or upon a mutually agreeable alternative date subject to issuance of a work order and shall complete the work specified in the work order prior to being considered eligible to participate in the clean-up of subsequent projects that may be assigned by MDEQ to the CONTRACTOR.
4. The CONTRACTOR shall remove, transport, process, and dispose of the subject waste tires from the selected waste tire abatement site in accordance with the Mississippi Waste Tire Law – Miss. Code Ann. Sections 17-17-401, et seq., as amended, the State of Mississippi Waste Tire Transportation and Waste Tire Management Regulations and any special terms or conditions of the work order.
5. The CONTRACTOR shall immediately notify MDEQ in writing upon the completion of a work order project.

SECTION C: CONTRACT ADMINISTRATION

The contracts awarded subsequent to this solicitation shall be administered by MDEQ. All invoices submitted by the Contractor for payment of services performed pursuant to

the contract shall be submitted to MDEQ to the attention of the Accounts Payable Department.

SECTION D: LIST OF ATTACHMENTS AND FORMS

Attachment A contains all of the necessary forms (Forms 1 through 5) that must be completed and submitted as part of the application. These forms include:

Attachment A – Form 1: Company Information
Attachment A – Form 2: Methods Description
Attachment A – Form 3: Experience
Attachment A – Form 4: Personnel Roster
Attachment A – Form 5: Equipment Inventory

Attachment B – Contains standard clauses that will be included in the contract to be awarded subsequent to this solicitation.

SECTION E: REPRESENTATIONS AND CERTIFICATIONS

To be considered qualified as a WASTE TIRE ABATEMENT CONTRACTOR, applicants must submit to MDEQ proof of the following:

1. Applicant must demonstrate that they have sufficient experience, knowledge, equipment, and personnel to effectively remove and dispose of the waste tires from waste tire abatement “project sites” identified by MDEQ;
2. Applicant must hold, be able to obtain and must maintain a current, valid waste tire hauler certificate issued by MDEQ;
3. Applicant must either hold a current waste tire processing facility permit/authorization from MDEQ or a comparable agency in another state or demonstrate an arrangement with a company which has been authorized by MDEQ and/or a comparable agency in another state to properly process and manage the waste tires;
4. Applicant must have maintained a good compliance record with all state regulations regarding the transportation, processing, storage, and disposal of waste tires;
5. Applicant must maintain at least \$500,000.00 in contractor’s general liability insurance;
6. Applicant must agree to begin work at any site within 10 days after execution of a site-specific work order by MDEQ or within another mutually agreeable time frame; and

7. Applicant must agree that charges for clean-up will be no more than the rate(s) established by MDEQ.

SECTION F: INSTRUCTIONS, CONDITIONS, AND NOTICES TO APPLICANTS

Issuing Office

This offer is issued for the State of Mississippi by the Mississippi Department of Environmental Quality, Office of Pollution Control. MDEQ reserves the right, without qualifications, to select any application as a basis for negotiation, to reject all applications not meeting minimum requirements, and to exercise its discretion and apply its judgment with respect to any application submitted.

Application Submission and Deadline

All Applicants must submit one original and one (1) copy of the entire application. **All applications must be received by MDEQ no later than Tuesday, January 10, 2017 at 5:00PM.** It is recommended that applicants mail applications via certified mail with a return receipt guaranteed. MDEQ will not be responsible for mail delays or lost mail.

Applications must be mailed to and addressed to the mailing address as follows:

**Mississippi Department of Environmental Quality
Waste Tire Abatement Program
P.O. Box 2261
Jackson, Mississippi 39225
Attention: Ryan Case**

SEALED APPLICATION – DO NOT OPEN

OR delivered to and addressed to the physical address as follows:

**Mississippi Department of Environmental Quality
Waste Tire Abatement Program
515 E. Amite Street
Jackson, Mississippi 39201
Attention: Ryan Case**

SEALED APPLICATION – DO NOT OPEN

Submission Deadline: Tuesday, January 10, 2017 at 5:00PM

1. Applications shall be submitted in sealed envelopes or packages addressed to the MDEQ program and person specified above.

2. One (1) original and One (1) copy of the application shall be submitted.
3. Receipt or acceptance of an application does not imply commitment or obligation on the part of the State of Mississippi to fund any application submitted; however, all applicants determined by MDEQ to be qualified will be listed as approved WASTE TIRE ABATEMENT CONTRACTORS and will be eligible to perform Waste Tire Abatement work for MDEQ at selected unauthorized waste tire sites, determined by MDEQ as eligible for cleanup funding.
4. Only those applicants responding by the January 10, 2017 deadline as specified above will be considered for selection.

Tasks to be Performed

Applicants shall provide all labor, materials, facilities, personnel, services, equipment, and management necessary to accomplish the tasks enumerated in the Work Statement, Section B. Applicants also shall specify subcontractors for disposal proposed to be used in the completion of the project. (See Attachment A – Form 2).

Ineligible Activities

Contract funds generally shall not be used for the purchase of equipment items that are not required as an integral part of the proposed project. Other examples of ineligible activities are: the purchase of land, buildings or structures, subsidy of public transit fares, subsidy of utility rates, and the purchase of equipment to conduct research of conservation techniques and technologies not commercially available.

Acceptance/Rejection of Applications

Failure to furnish all information or to follow the format identified in these guidelines may disqualify the application. It is important that each section of the original application be submitted in the most complete manner possible. MDEQ also reserves the right to consult with outside parties in evaluation of applications. All applications become property of the State of Mississippi upon receipt and will not be returned to the Applicant.

Application Preparation Expenses

MDEQ will not pay any costs incurred in the preparation and submission of applications.

Withdrawal of Applications.

Applications may be withdrawn by written notice received at any time before award.

Application Modifications

Any requests to modify applications must be submitted in writing by the Primary Applicant. All requests for modifications must be submitted prior to the application submission deadline.

Equal Opportunity

Contracts, grants, loans, purchases, and all other financial transactions are administered by MDEQ equally to all without regard to race, color, creed, sex, national origin, disability, or age.

Amendments to Application Specifications

MDEQ reserves the right to issue amendments to these guidelines. If it becomes necessary to amend said guidelines, MDEQ will provide copies of the amendments to all Applicants having submitted applications based on earlier guidelines.

Application Preparation Instructions

All applications shall be prepared in accordance with this sub-section. All necessary forms required by MDEQ to be completed by applicant are presented in Attachment A. Applicants must ensure that all the information specified in Attachment A is submitted to MDEQ by **Tuesday, January 10, 2017 at 5:00 p.m.** The application shall consist of the following items:

1. Company Information

Attachment A – Form 1 of this package must be completed by the Applicant and submitted as part of the application along with the appropriate attachments.

2. Minimum Requirements: Representations and Certifications

All applications will contain proof that the requirements established in SECTION E: REPRESENTATIONS AND CERTIFICATIONS have been met.

3. Application Narrative

As provided for in the Attachment A forms, the Applicant must provide the following information as part of the application:

a) Methods Description (Attachment A, Form 2)

A description of the proposed method(s) of removal, processing, and disposal/recycling that is likely to be employed in the abatement of unauthorized waste tire piles.

b) Experience Description (Attachment A, Form 3)

Information detailing the applicant's experience regarding collection, transportation, and processing of waste tires and current details regarding the disposal of the tires by the applicant.

c) Personnel Roster (Attachment A, Form 4)

A listing of the full-time employees who will most likely participate in any waste tire abatement project. The listing should also include the present job classification of each employee listed (ex: John Doe – truck driver).

d) Equipment Inventory (Attachment A, Form 5)

Information regarding the equipment owned by the applicant which will be used or that can be used to perform the services as stated in this solicitation. This information should include the type equipment, trucks, trailers, shredders and/or other specialized equipment, and number of each. Indicate the processing capacity of each waste tire processing equipment component where applicable.

**ATTACHMENT A
FORM 1**

**MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
OFFICE OF POLLUTION CONTROL
P.O. BOX 2261
JACKSON, MISSISSIPPI 39225
(601) 961-5171**

**APPLICATION FOR LISTING AS APPROVED
WASTE TIRE ABATEMENT CONTRACTOR**

1. Name of Company or Person Applying:
2. Mailing Address:
P.O. Box/Street Address:
City State Zip
3. Physical Address:
Street Address
City State Zip
5. Telephone Numbers:
Office Number
Cell Number
Fax Number
6. Name of principal officer:
6. Name of contact person:
7. Waste tire processing permit number/authorization:
(attach copy of permit/authorization)
8. Waste tire hauler identification number:
(attach copy of current, valid certificate)
9. Attach proof of contractor's general liability insurance of at least \$500,000.00

FOR MDEQ USE ONLY: DATE RECEIVED _____

FORM 2

METHODS DESCRIPTION

Please describe the proposed method(s) of removal, processing, and disposal/recycling that the applicant intends to employ in the abatement of unauthorized waste tire piles. If the applicant is not an authorized waste tire processor, please indicate the name, address and permit number (if applicable) of the authorized processor(s) the applicant intends to use. Attach documentation of the processor's agreement to accept the tires.

FORM 3

EXPERIENCE

Please provide information detailing your company's experience regarding the collection, transportation and processing of waste tires and current details regarding the disposal of the tires by your company.

FORM 4

PERSONNEL ROSTER

Please list below all of your company's full-time employees who will most likely participate in any waste tire abatement project, and designate their present job classification (truck driver, equipment operator, etc.).

You may attach an existing employee list to this application if that list includes employees' name and job classification. If your company intends to utilize contract or part-time workers in the abatement project, please indicate the number and/or source(s) of the workers you intend to employ.

FORM 5

EQUIPMENT INVENTORY

Please list below the equipment owned by your company that will be used or that can be used to perform the services as stated in the public notice.

Please list and indicate the types of equipment including: trucks, trailers, shredders and other processing or removal equipment. Indicate the processing capacity of each waste tire processing unit or the overall processing system if applicable. If your company maintains a current equipment list that provides the same requested information, you may attach a copy to this application. If your company intends to secure certain equipment contractually to perform the clean-up project, please describe the type and contractual source of the equipment that you have the ability to acquire.

ATTACHMENT B

The following information is the standard clauses that will be included in the contract to be awarded subsequent to this solicitation.

Employment Status

The CONTRACTOR shall, during the entire term of this contract, be construed to be an independent CONTRACTOR. Nothing in this contract is intended to nor shall be construed to create an employer-employee relationship, or a joint venture relationship. The CONTRACTOR represents that it is qualified to perform the duties to be performed under this contract and that it has, or will secure, if needed, at its own expense, applicable personnel who are qualified to perform the duties required under this contract. Such personnel shall not be deemed in any way, directly or indirectly, expressly or by implication, to be employees of MDEQ.

Any person assigned by the CONTRACTOR to perform the services hereunder shall be the employee of the CONTRACTOR, who shall have the sole right to hire and discharge its employee. If the CONTRACTOR is notified within the first eight (8) hours of assignment that the person is unsatisfactory, the CONTRACTOR will not charge MDEQ for those hours.

The CONTRACTOR shall pay when due, all salaries and wages of its employees and it accepts exclusive responsibility for the payment of federal income tax, state income tax, social security, unemployment compensation and any other withholdings that may be required.

It is further understood that the consideration expressed herein constitutes full and complete compensation for all services and performances hereunder, and that any sum due and payable to the CONTRACTOR shall be paid as a gross sum with no withholdings or deductions being made by MDEQ for any purpose from said contract sum except as permitted in paragraphs, entitled Termination for Convenience, Termination for Default or Termination Upon Bankruptcy.

Applicable Law

The contract shall be governed by and construed in accordance with the laws of the State of Mississippi, excluding its conflicts of laws, provisions, and any litigation with respect thereto shall be brought in the courts of the State. CONTRACTOR shall comply with applicable federal, state, and local laws and regulations.

Availability of Funds

It is expressly understood and agreed that the obligation of MDEQ to proceed under this agreement is conditioned upon the appropriation of funds by the Mississippi State Legislature and the receipt of state and/or federal funds. If the funds anticipated for the

continuing fulfillment of the agreement are, at any time, not forthcoming or insufficient, either through the failure of the federal government to provide funds or of the State of Mississippi to appropriate funds or the discontinuance or material alteration of the program under which funds were provided or if funds are not otherwise available to MDEQ, MDEQ shall have the right upon ten (10) working days written notice to the CONTRACTOR, to terminate this agreement without damage, penalty, cost or expenses to MDEQ of any kind whatsoever. The effective date of termination shall be as specified in the notice of termination.

Representation Regarding Contingent Fees

CONTRACTOR represents that it has not retained a person to solicit or secure a state contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee, except as disclosed in CONTRACTOR's bid or proposal.

Representation Regarding Gratuities

The CONTRACTOR represents that it has not violated, is not violating, and promises that it will not violate the prohibition against gratuities set forth in Section 6-204 (Gratuities) of the Mississippi Personal Service Contract Review Board Rules and Regulations.

Procurement Regulations

The contract shall be governed by the applicable provisions of the *Mississippi Personal Service Contract Review Board Rules and Regulations*, a copy of which is available at:

210 East Capitol, Suite 800, Jackson, Mississippi 39201 for inspection,

or downloadable at: <http://www.mspb.ms.gov>.

Trade Secrets, Commercial and Financial Information

It is expressly understood that Mississippi law requires that the provisions of this contract which contain the commodities purchased or the personal or professional services provided, the price to be paid, and the term of the contract shall not be deemed to be a trade secret or confidential commercial or financial information and shall be available for examination, copying, or reproduction.

Compliance with Laws

The CONTRACTOR understands that MDEQ is an equal opportunity employer and therefore, maintains a policy which prohibits unlawful discrimination based on race, color, creed, sex, age, national origin, physical handicap, disability, genetic information, or any other consideration made unlawful by federal, state, or local laws. All such discrimination is unlawful and CONTRACTOR agrees during the term of the agreement

that CONTRACTOR will strictly adhere to this policy in its employment practices and provision of services. CONTRACTOR shall comply with, and all activities under this agreement shall be subject to, all applicable federal, State of Mississippi, and local laws and regulations, as now existing and as may be amended or modified.

Stop Work Order

- A. Order to Stop Work. MDEQ, may, by written order to the CONTRACTOR at any time, and without notice to any surety, require the CONTRACTOR to stop all or any part of the work called for by this contract. This order shall be for a specified period not exceeding ninety (90) days after the order is delivered to the CONTRACTOR, unless the parties agree to any further period. Any such order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the CONTRACTOR shall forthwith comply with its terms and take all reasonable steps to minimize the occurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or within any further period to which the parties shall have agreed, MDEQ shall either:
- 1) cancel the stop work order; or
 - 2) terminate the work covered by such order as provided in paragraphs of this contract.
- B. Cancellation or Expiration of the Order. If a stop work order issued under this clause is canceled at any time during the period specified in the order, or if the period of the order or any extension thereof expires, the CONTRACTOR shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or service price, or both, and the contract shall be modified in writing accordingly, if:
- 1) the stop work order results in an increase in the time required for, or in the CONTRACTOR's cost properly allocable to, the performance of any part of this contract; and
 - 2) the CONTRACTOR asserts a claim for such an adjustment within thirty (30) days after the end of the work period of work stoppage; provide that, if MDEQ decides that the facts justify such action, any such claim asserted may be received and acted upon at any time prior to final payment under this contract.
- C. Termination of Stopped Work. If a stop work order is not canceled and the work covered by such order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise.

- D. Adjustments of Price. Any adjustment in contract price made pursuant to this clause shall be determined in accordance with the Price Adjustment Clause of this contract.

E-Payment

CONTRACTOR agrees to accept all payments in United States currency via the State of Mississippi's electronic payment and remittance vehicle. MDEQ agrees to make payment in accordance with Mississippi law on "Timely Payments for Purchases by Public Bodies," which generally provides for payment of undisputed amounts by the agency within forty-five (45) days of receipt of invoice. Miss. Code Ann. § 31-7-305 (1972, as amended).

E-Verification

If applicable, CONTRACTOR represents and warrants that it will ensure its compliance with the Mississippi Employment Protection Act of 2008, and will register and participate in the status verification system for all newly hired employees. Miss. Code Ann. §§ 71-11-1 *et seq.* (1972, as amended). The term "employee" as used herein means any person that is hired to perform work within the State of Mississippi. As used herein, "status verification system" means the Illegal Immigration Reform and Immigration Responsibility Act of 1996 that is operated by the United States Department of Homeland Security, also known as the E-Verify Program, or any other successor electronic verification system replacing the E-Verify Program. CONTRACTOR agrees to maintain records of such compliance. Upon request of the State and after approval of the Social Security Administration or Department of Homeland Security when required, CONTRACTOR agrees to provide a copy of each such verification. CONTRACTOR further represents and warrants that any person assigned to perform services hereafter meets the employment eligibility requirements of all immigration laws. The breach of this agreement may subject CONTRACTOR to the following:

- 1) termination of this contract for services and ineligibility for any state or public contract in Mississippi for up to three (3) years with notice of such cancellation/termination being made public;
- 2) the loss of any license, permit, certification or other document granted to CONTRACTOR by an agency, department or governmental entity for the right to do business in Mississippi for up to one (1) year; or,
- 3) both.

In the event of such cancellation/termination, CONTRACTOR would also be liable for any additional costs incurred by the State due to Contract cancellation or loss of license or permit to do business in the State.

Transparency

This contract, including any accompanying exhibits, attachments, and appendices, is subject to the “Mississippi Public Records Act of 1983,” and its exceptions. See Miss. Code Ann. §§ 25-61-1 *et seq.* (1972, as amended) and Miss. Code Ann. § 79-23-1 (1972, as amended). In addition, this contract is subject to the provisions of the Mississippi Accountability and Transparency Act of 2008. Miss. Code Ann. §§ 27-104-151 *et seq.* (1972, as amended). Unless exempted from disclosure due to a court-issued protective order, a copy of this executed contract is required to be posted to the Department of Finance and Administrations independent agency contract website for public access at <http://www.transparency.mississippi.gov>. Information identified by CONTRACTOR as trade secrets, or other proprietary information, including confidential vendor information or any other information which is required confidential by state or federal law or outside the applicable freedom of information statutes, will be redacted.

Paymode

Payments by state agencies using the electronic payment system shall be made and remittance information provided electronically as directed by the State. These payments shall be deposited into the bank account of the CONTRACTOR’S choice. The State, may at its sole discretion, require the CONTRACTOR to submit invoices and supporting documentation electronically at any time during the term of this Agreement. CONTRACTOR understands and agrees that the State is exempt from the payment of taxes. All payments shall be in United States currency.

Termination for Convenience

1. *Termination.* The Agency Head or designee may, when the interests of the State so require, terminate this contract in whole or in part, for the convenience of the State. The Agency Head or designee shall give written notice of the termination to CONTRACTOR specifying the part of the contract terminated and when termination becomes effective.
2. *Contractor’s Obligations.* CONTRACTOR shall incur no further obligations in connection with the terminated work and on the date set in the notice of termination CONTRACTOR will stop work to the extent specified. CONTRACTOR shall also terminate outstanding orders and subcontracts as they relate to the terminated work. CONTRACTOR shall settle the liabilities and claims arising out of the termination of subcontracts and orders connected with the terminated work. The Agency Head or designee may direct CONTRACTOR to assign CONTRACTOR’s right, title, and interest under terminated orders or subcontracts to the State. CONTRACTOR must still complete the work not terminated by the notice of termination and may incur obligations as are necessary to do so.

Termination for Default

1. *Default.* If CONTRACTOR refuses or fails to perform any of the provisions of this contract with such diligence as will ensure its completion within the time specified in this contract or any extension thereof, or otherwise fails to timely satisfy the contract provisions, or commits any other substantial breach of this contract, the Agency Head or designee may notify CONTRACTOR in writing of the delay or nonperformance and if not cured in ten (10) days or any longer time specified in writing by the Agency Head or designee, such officer may terminate CONTRACTOR's right to proceed with the contract or such part of the contract as to which there has been delay or a failure to properly perform. In the event of termination in whole or in part, the Agency Head or designee may procure similar supplies or services in a manner and upon terms deemed appropriate by the Agency Head or designee. CONTRACTOR shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services.
2. *Contractor's Duties.* Notwithstanding termination of the contract and subject to any directions from the procurement officer, CONTRACTOR shall take timely, reasonable, and necessary action to protect and preserve property in the possession of CONTRACTOR in which the State has an interest.
3. *Compensation.* Payment for completed services delivered and accepted by the State shall be at the contract price. The State may withhold from amounts due CONTRACTOR such sums as the Agency Head or designee deems to be necessary to protect the State against loss because of outstanding liens or claims of former lien holders and to reimburse the State for the excess costs incurred in procuring similar goods and services.
4. *Excuse for Nonperformance or Delayed Performance.* Except with respect to defaults of subcontractors, CONTRACTOR shall not be in default by reason of any failure in performance of this contract in accordance with its terms (including any failure by CONTRACTOR to make progress in the prosecution of the work hereunder which endangers such performance) if CONTRACTOR has notified the Agency Head or designee within 15 days after the cause of the delay and the failure arises out of causes such as: acts of God; acts of the public enemy; acts of the State and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather. If the failure to perform is caused by the failure of a subcontractor to perform or to make progress, and if such failure arises out of causes similar to those set forth above, CONTRACTOR shall not be deemed to be in default, unless the services to be furnished by the subcontractor were

reasonably obtainable from other sources in sufficient time to permit CONTRACTOR to meet the contract requirements. Upon request of CONTRACTOR, the Agency Head or designee shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, CONTRACTOR's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the State under the clause entitled (in fixed-price contracts, "Termination for Convenience," in cost-reimbursement contracts, "Termination"). (As used in this Paragraph of this clause, the term "subcontractor" means subcontractor at any tier).

5. *Erroneous Termination for Default.* If, after notice of termination of CONTRACTOR's right to proceed under the provisions of this clause, it is determined for any reason that the contract was not in default under the provisions of this clause, or that the delay was excusable under the provisions of Paragraph (4) (Excuse for Nonperformance or Delayed Performance) of this clause, the rights and obligations of the parties shall, if the contract contains a clause providing for termination for convenience of the State, be the same as if the notice of termination had been issued pursuant to such clause.
6. *Additional Rights and Remedies.* The rights and remedies provided in this clause are in addition to any other rights and remedies provided by law or under this contract.

Termination Upon Bankruptcy

This contract may be terminated in whole or in part by MDEQ upon written notice to CONTRACTOR, if CONTRACTOR should become the subject of bankruptcy or receivership proceedings, whether voluntary or involuntary, or upon the execution by CONTRACTOR of an assignment for the benefit of its creditors. In the event of such termination, CONTRACTOR shall be entitled to recover just and equitable compensation for satisfactory work performed under this contract, but in no case shall said compensation exceed the total contract price.

Ownership of Documents and Work Products

All data collected by the CONTRACTOR and all documents, notes, programs, databases (and all application thereof), files, reports, studies, and/or other material collected and prepared by the CONTRACTOR in connection with this contract, whether completed or in progress, shall be the property of MDEQ. MDEQ hereby reserves all rights to the databases and all application thereof and to any and all information and/or materials prepared in connection with this contract.

The CONTRACTOR is prohibited from use of the above described information and/or materials without the express written approval of MDEQ.

In the event the CONTRACTOR notifies MDEQ in writing that it believes certain work products are exempt from disclosure under the Mississippi Public Records Act, MDEQ agrees to comply with the applicable provisions of Mississippi Code Annotated Sections 25-61-1, et seq. and 49-17-39, including, but not limited to, notifying the CONTRACTOR in the event a request is made for disclosure of work products the CONTRACTOR maintains are exempt from disclosure and obtaining a determination from the appropriate authority regarding whether the work products are exempt from disclosure.

Record Retention and Access to Records

The CONTRACTOR shall maintain and make available to MDEQ, any financial records, supporting documents, statistical records and all other records pertinent to the services performed under this contract. These records shall be maintained for at least three (3) years; however, if any litigation or other legal action, by or on behalf of MDEQ has begun that is not completed at the end of the three (3) year period, or if audit findings, litigation or other legal action has not been resolved at the end of the three (3) year period, the records shall be retained until resolution.

Modification or Amendment

The CONTRACTOR affirms that it has read and understands the clauses contained herein. No prior terms varying or contradicting this agreement exist. The CONTRACTOR agrees that this contract constitutes the entire agreement between the parties. Modification, changes or amendments to this contract may be made upon mutual agreement of the parties hereto. However, any change, supplement, modification or amendment of any term, provision or condition of this contract must be in writing and signed by both parties hereto.

Assignment

The CONTRACTOR shall not assign or otherwise transfer the obligation incurred on its part pursuant to the terms of this contract without the prior written consent of MDEQ. Any attempted assignment or transfer of its obligations without such consent shall be null and void. All obligations and duties of either party under this contract shall be binding on all successors in interest or assigns of such party.

Waiver

Failure of either party hereto to insist upon strict compliance with any of the terms, covenants and conditions hereof shall not be deemed a waiver or relinquishment of any similar right or power hereunder at any subsequent time or of any other provision hereof, nor shall it be construed to be a modification of the terms of this contract.

Governing Law

This contract shall be construed and governed in accordance with the laws of the State of Mississippi and venue for the resolution of any dispute shall be Jackson, Hinds County, Mississippi. The CONTRACTOR expressly agrees that under no circumstances shall MDEQ be obligated to pay an attorney's fee or the cost of legal action to the CONTRACTOR.

Severability

If any term or provision of this contract is prohibited by the laws of the State of Mississippi or declared invalid or void by a court of competent jurisdiction, the remainder of the contract shall be valid and enforceable to the fullest extent permitted by law.

Disputes

Before pleading to any judicial system at any level, the CONTRACTOR must exhaust all administrative remedies. A written complaint must first be sent to the Executive Director of MDEQ. The decision of the Executive Director shall be reduced to writing and a copy thereof mailed or furnished to the CONTRACTOR. Pending non-resolution of the complaint at this point, successive administrative remedies will include bringing the complaint before the Mississippi Commission on Environmental Quality pursuant to Mississippi Code Annotated Section 49-17-35 (Rev. 2012), with appeals from the Commission's decision following procedures as outlined in Miss. Code Ann. Section 49-17-41 (Rev. 2012).

Conflict of Interest

The CONTRACTOR shall immediately notify MDEQ in writing of any potential conflict of interest resulting from the representation of or service to other clients. If such conflict cannot be resolved to MDEQ's satisfaction, MDEQ reserves the right to terminate this contract per the paragraphs entitled Termination for Convenience, Termination for Default or Termination Upon Bankruptcy.

Insurance

The CONTRACTOR represents that it will maintain Worker's Compensation Insurance as prescribed by law which shall inure to the benefit of the CONTRACTOR's personnel, as well as comprehensive General Liability in an amount no less than \$500,000.00 combined single limit and Employee Fidelity Bond Insurance. The CONTRACTOR shall comply with applicable federal, state and local laws and regulations.

Indemnification

To the fullest extent allowed by law, the CONTRACTOR shall indemnify, defend, save and hold harmless, protect, and exonerate MDEQ, its Commissioners, Board Members, officers,

employees, agents, and representatives, and the State of Mississippi from and against all claims, demands, liabilities, suits, actions, damages, losses, and costs of every kind and nature whatsoever, including, without limitation, court costs, investigative fees and expenses, and attorney's fees, arising out of or caused by the CONTRACTOR and/or its partners, principals, agents, employees and/or Subcontractors in the performance of or failure to perform this agreement. In MDEQ's sole discretion, the CONTRACTOR may be allowed to control the defense of any such claim, suit, etc. In the event the CONTRACTOR defends said claim, suit, etc., the CONTRACTOR shall use legal counsel acceptable to MDEQ; the CONTRACTOR shall be solely responsible for all costs and/or expenses associated with such defense, and MDEQ shall be entitled to participate in said defense. The CONTRACTOR shall not settle any claim, suit, etc., without MDEQ's concurrence, which MDEQ shall not unreasonably withhold.

Subcontracts

The CONTRACTOR must obtain written approval from MDEQ by submitting Attachment B, Request to Subcontract for approval before subcontracting any portion of this contract. No such approval by MDEQ of any subcontract shall be deemed in any way to provide for the incurrence of any obligation of MDEQ in addition to the total fixed price agreed upon in this contract. All subcontracts shall be subject to the terms and conditions of this contract and to any conditions of approval that MDEQ may deem necessary.

Third Party Action Notification

The CONTRACTOR shall give MDEQ prompt notice in writing of any action or suit filed, and prompt notice of any claim made against the CONTRACTOR by any entity that may result in litigation related in any way to this contract.

Authority to Contract

The CONTRACTOR warrants (a) that it is a validly organized business with valid authority to enter into this agreement; (b) that it is qualified to do business and in good standing in the State of Mississippi; (c) that entry into and performance under this agreement is not restricted or prohibited by any loan, security, financing, contractual, or other agreement of any kind; and (d) notwithstanding any other provision of this agreement to the contrary, that there are no existing legal proceedings, either voluntary or otherwise, which may adversely affect its ability to perform its obligations under this agreement.

Confidential Information

The CONTRACTOR shall treat all MDEQ data and information to which it has access by its performance under this contract as confidential to the extent that confidential treatment of same is required under federal and/or state law and shall not disclose such data or information to a third party without specific written consent of MDEQ. In the event that the CONTRACTOR receives notice that a third party request divulgence of confidential or otherwise protected information and/or has served upon it a subpoena or other validly issued

administrative or judicial process ordering divulgence of confidential or otherwise protected information, the CONTRACTOR shall promptly inform MDEQ and thereafter respond in conformity with such subpoena to the extent mandated by state or federal law. This section shall survive the termination or completion of this contract.

Captions

The captions or headings in this contract are for convenience only, and in no way define, limit or describe the scope or intent of any provision or section of this contract.

Contact Information

The contact information for contract administration matters is as follows:

For MDEQ:

For CONTRACTOR:

Notice

Any notice required or permitted to be given under this contract shall be in writing and sent by certified United States mail, postage prepaid, return receipt requested, to MDEQ by writing the Executive Director of the Mississippi Department of Environmental Quality. The parties agree to promptly notify each other of any change of address.

Final Payment

Upon satisfactory completion of the work performed under this contract, as a condition before final payment under this contract or as a termination settlement under this contract, the CONTRACTOR shall execute and deliver to MDEQ a release of all claims, Attachment A, against MDEQ arising under, or by virtue of, this contract, except claims which are specifically exempted by the CONTRACTOR to be set forth therein. Unless otherwise provided in the contract, by state law or otherwise expressly agreed to by the parties in this contract, final payment under this contract or settlement upon termination of this contract shall not constitute waiver of MDEQ's claims against the CONTRACTOR or his sureties under this contract or applicable performance and payment bonds.

Contract Changes

MDEQ may, at any time, by written order, make changes within the general scope of the contract or any of its Task Orders as to the services or work to be performed. If such

changes cause an increase or a decrease in the CONTRACTOR's cost or time required to perform any services under this contract or assigned Task Orders, whether or not changed by any order, MDEQ shall make an equitable adjustment and modify this contract, or the appropriate Task Order, in writing. The CONTRACTOR must assert any claim for adjustment under this clause in writing within thirty (30) days from the date the CONTRACTOR received MDEQ's notification of change, unless MDEQ grants additional time before the date of final payment. No services for which the CONTRACTOR will charge an additional compensation shall be furnished without the written authorization of MDEQ.

Small, Minority and Women Businesses

It is the federal grantor agency's policy to award a fair share of contracts to small minority and women businesses. The CONTRACTOR shall ensure, to the fullest extent possible, that at least the applicable fair share objectives for supplies, equipment and services are made available to Minority Business Enterprises (MBE)/Women Business Enterprises (WBE). The CONTRACTOR shall also include in its bid for documents for Subcontractors the following fair share of objectives:

Equipment:	6.8% MBE and 5.1% WBE
Supplies:	7.7% MBE and 3.4% WBE
Services:	1.1% MBE and 2.2% WBE

CONTRACTORS awarded contracts with full or partial federal funding will abide by the following affirmative steps and will include this clause in any subcontracts at any tier:

- a. Including small, minority and women businesses on solicitation lists;
- b. Assuring that small, minority and women businesses are solicited whenever they are potential sources;
- c. Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation of small, minority and women businesses;
- d. Establishing delivery schedules, where the requirements of the work permits, which will encourage participation by small, minority and women businesses;
- e. Using the services and assistance of the Small Business Administration and the Office of Minority Business Enterprise of the U. S. Department of Commerce, as appropriate; and
- f. Including these steps in any subcontracts awarded under this contract.

Recycled Paper

Pursuant to EPA Order 1000.25, dated January 24, 1990, the CONTRACTOR agrees to use recycled paper for all reports which are prepared as a part of the contract and delivered to MDEQ. This requirement applies even when the cost of recycled paper is higher than that of virgin paper.

Hotel/Motel Fire Safety Act of 1990

If, in the course of this contract, the CONTRACTOR conducts meetings at hotels or motels, including, but not limited to, conferences, conventions, training sessions, and seminars, the CONTRACTOR shall conduct such meetings at hotels or motels that are in compliance with the Hotel and Motel Fire Safety Act of 1990 (P. L. 101-391). A list of certified hotels and motels will be provided upon the request of the CONTRACTOR. It is possible to have additional facilities added to the list if sufficient time is allowed.

Lobbying Disclosure Act of 1995

If the CONTRACTOR is an organization described in Section 501 (c) (4) of the Internal Revenue Code of 1986, then the CONTRACTOR warrants that it does not and will not, engage in lobbying activities prohibited by the Lobbying Disclosure Act of 1995.

The CONTRACTOR agrees to refrain from entering into any subcontract under this contract with any organization described in Section 501 (c) (4) of the Internal Revenue Code of 1986, unless such organization warrants that it does not, and will not, engage in lobbying activities prohibited by the Act as a special condition of this contract.